

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2007

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THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION Nos.33844&30965 of 2004
and
W.P.M.P.No.40931 of 2004

1.S.Porchelian Petitioner in W.P.No.33844 of 2004
1.S.Porchelian
2.C.Indra Petitioners in W.P.No.30965 of 2004

Vs

1.The State of Tamil Nadu.
The Secretary to Government,
Public Works Department, Chennai - 9.
2.The Chief Engineer,
Public Works Department (W.R.O.),
Chepauk, Chennai - 5. Respondents in both the writ petitions
3. J.Raja Gopal Respondent in W.P.No.33844 of 2004
(R3 impleaded as per order
dated 18.02.2005 in WMP.No.1979/05)

These Writ Petitions have been filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus as stated
therein.

For petitioner : Mr.S.M.Subramaniam
For respondents : Mr.C.Thirumaran - G.A. for R1&R2
Ms.Malarvizhi Udayakumar
For R3 in writ petition.No.33844 of 2004

COMMON ORDER

W.P.No.33844 of 2004:- The Writ Petition has been filed praying for the
issuance of a Writ of Mandamus to prepare a revised seniority list of
Technical Assistant based on his respective initial date of appointment
under Rule 35(aa) of the Tamil Nadu State and Sub-ordinate Service Rules
and consequently to issue promotion order to the petitioner to the post of
Junior Engineer.

W.P.No.30965 of 2004 :- The Writ Petition has been filed praying for the issuance of a Writ of Mandamus to regularise the services of the petitioners from their respective initial date of appointment on 07.12.1982 and 03.07.1982 and consequently fix the seniority of the petitioners based on the initial date of appointment and promote them to the post of Junior Engineers on par with their immediate juniors with all monetary and attendant benefits.

2.Since both the above mentioned writ petitions have arisen under the same facts and circumstances, a common order is passed.

3.Heard the learned counsel for the petitioners as well as for the respondents.

4.Both the petitioners are working in the cadre of Technical Assistants in the Public Works Department. Initially, they were appointed as NMR Technical Assistants, through the District Employment Exchange, in the year 1982, and were continued in service on daily wages. During the year 1985, the petitioners were ousted from service and subsequently a policy decision has been taken to absorb the NMR's in permanent service, in a phased manner. Accordingly, in the year 1991, the petitioners were reinstated in the post of Technical Assistant in the time scale of pay. Thereafter, the petitioners have been working continuously without any break in service. However, due to certain administrative delays, regularisation of their services took place only after a lapse of eight years. The Government of Tamil Nadu had issued G.O.Ms.No. 227, dated 12.04.1999, regularising the services of the petitioners with effect from the date of the Government Order. In paragraph 2 of the Government Order, it has been categorically stated that the year that would be considered for regularisation would be the year in which, they have completed 240 days. It is not in dispute that the petitioners have been appointed in the year 1982 and in the same year, they have completed 240 days of service. While that being so, the petitioners are being denied the seniority in promotion to the post of Junior Engineers, since the year 1991 has been taken as the year of reckoning for the petitioners. The first respondent in his letter, dated 23.09.2004, had directed the second respondent to reconsider the seniority list, dated 22.12.2003, and to follow the guidelines issued by the Government in fixing the seniority of Technical Assistants. This is an indication that the earlier seniority list prepared in the year 2004 is not in accordance with the guidelines issued by the Government. Therefore, the petitioners have filed the present writ petition for a Writ of Mandamus to regularise the services of the petitioners from the dates of their appointment namely, 07.12.1982 and 03.07.1982, respectively.

5.The learned counsel appearing for the petitioners submits that both the petitioners had completed 240 days of service in the year 1982 itself and they have not been given the seniority accordingly. The Learned counsel appearing for the petitioners further submits that the petitioners are not claiming any monetary benefits and it is only with regard to their seniority,the claim is made.

6.The Learned Government Advocate, appearing on behalf of the respondents has placed before this Court the provisional seniority list of Technical Assistants. As per G.O.Ms.No.227/PW(C1) Department, dated 12.04.1999,a provisional seniority list of Technical Assistants had been prepared. From the said provisional seniority list placed before this Court by the learned Government Advocate, it is seen that the date of first engagement is 7th, December,1982, year of completion of 10 years is 1997, the year in which 240 days worked as 1983, and the year of crossing of 2400 days is 1996 with regard to the first petitioner. With regard to the second petitioner in W.P.No.30965 of 2004, it is seen that the date of first engagement is 03.07.1982, year of completion of 10 years is 1998, the year in which 240 days worked is 1983, and the year of crossing of 2400 days is 1996. The learned Government Advocate had further submitted that the year 1983, would be taken as the relevant year for fixing the seniority.

7.In such circumstance, the learned counsel appearing for the petitioners had submitted that it would suffice, if the facts as such, are recorded and an order passed thereon. Accordingly, the respondents are directed to consider 1983 as the year for reckoning the seniority of the petitioners for promotion to the post of Junior Engineers along with the other attendant benefits for which they would be eligible.

The writ petitions are disposed of, with the above directions. Consequently, the connected W.P.M.P is closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

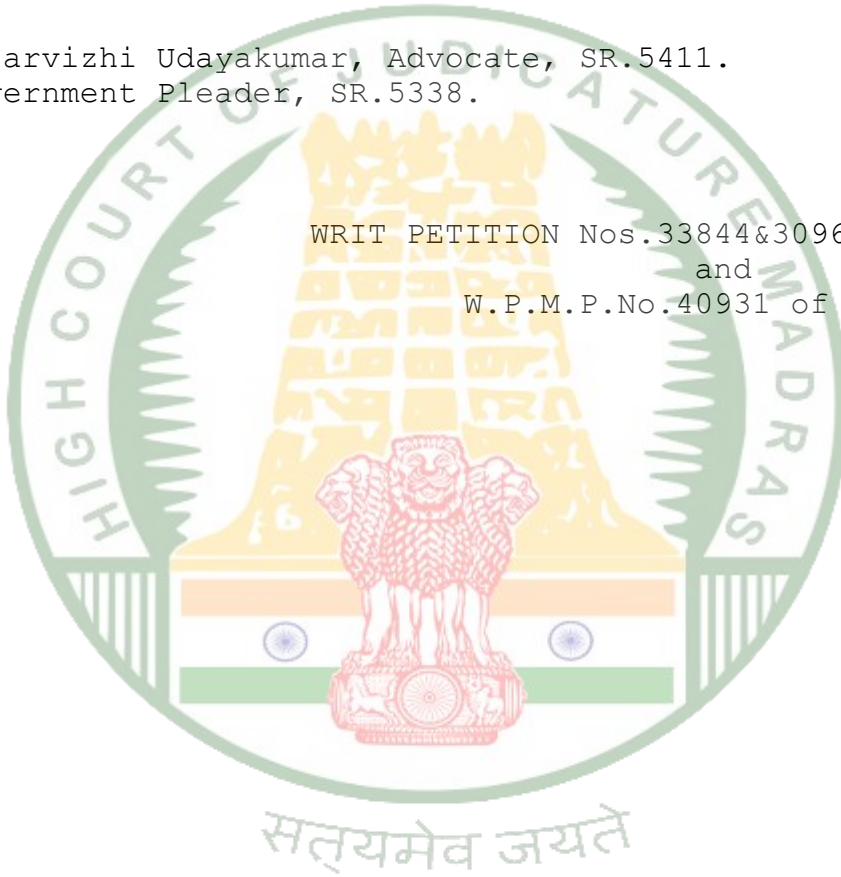
To

1. The Secretary to Government,
Public Works Department,
Chennai - 9.
2. The Chief Engineer,
Public Works Department (W.R.O.),
Chepauk, Chennai - 5.

1 cc To M/S.Malarvizhi Udayakumar, Advocate, SR.5411.
1 cc To The Government Pleader, SR.5338.

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W.P.M.P.No.40931 of 2004

BVR(CO)
RVL 06.02.2007



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